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BEFORE THE
POLLUTION CONTROL HEARINGS BOARD .
STATE OF WASHINGTON

IN THE MATTER OF)
TIM CORLISS & SON COMPANY,)
)
Appellant,)
)
v.)
)
PUGET SOUND AIR POLLUTION)
CONTROL AGENCY,)
)
Respondent.)

PCHB No. 791

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

THIS MATTER being an appeal of a \$100 civil penalty for an
alleged open burning violation of respondent's Regulation I; having
come on regularly for hearing before the Pollution Control Hearings
Board on the 9th day of June, 1975, at Tacoma, Washington; and
appellant, Tim Corliss & Son Company, appearing pro se and respondent,
Puget Sound Air Pollution Control Agency, appearing through its
attorney, Keith D. McGoffin; and Board members present at the
hearing being Walt Woodward (presiding), and Chris Smith and the
Board having considered the sworn testimony, exhibits, records

1 and files herein and having entered on the 1st day of July, 1975,
2 its proposed Findings of Fact, Conclusions of Law and Order, and
3 the Board having served said proposed Findings, Conclusions and Order
4 upon all parties herein by certified mail, return receipt requested
5 and twenty days having elapsed from said service; and

6 The Board having received no exceptions to said proposed
7 Findings, Conclusions and Order; and the Board being fully advised
8 in the premises; now therefore,

9 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that said proposed
10 Findings of Fact, Conclusions of Law and Order, dated the 1st day of
11 July, 1975, and incorporated by this reference herein and attached
12 hereto as Exhibit A, are adopted and hereby entered as the Board's
13 Final Findings of Fact, Conclusions of Law and Order herein.

14 DONE at Lacey, Washington, this 11th day of August, 1975.

15 POLLUTION CONTROL HEARINGS BOARD

16 
17 _____
18 CHRIS SMITH, Chairman

19 
20 _____
21 WALT WOODWARD, Member

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26 FINAL FINDINGS OF FACT,
27 CONCLUSIONS OF LAW
AND ORDER

CERTIFICATION OF MAILING

I, LaRene Barlin, certify that I deposited in the United States mail, copies of the foregoing document on the 11th day of August, 1975, to each of the following-named parties, at the last known post office addresses, with the proper postage affixed to the respective envelopes:

Mr. Keith D. McGoffin
Burkey, Marsico, Rovai, McGoffin,
Turner and Mason
P. O. Box 5217
Tacoma, Washington 98405

Mr. Harry B. Corliss, President
Tim Corliss & Son Company
P. O. Box 487
Sumner, Washington 98390



LARENE BARLIN
POLLUTION CONTROL HEARINGS BOARD

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF)
TIM CORLISS & SON COMPANY,)
Appellant,)
v.)
PUGET SOUND AIR POLLUTION)
CONTROL AGENCY,)
Respondent.)

PCHB No. 791

FINDINGS OF FACT,
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This matter, the appeal of a \$100 civil penalty for an alleged open burning violation of respondent's Regulation I, came before the Pollution Control Hearings Board (Walt Woodward, presiding officer, and Chris Smith, Chairman) at a formal hearing in the Tacoma facility of the State Board of Industrial Insurance Appeals on June 9, 1975.

Appellant appeared pro se; respondent appeared through Keith D. McGoffin. Jennifer Rowland, Olympia court reporter, recorded the proceedings.

Witnesses were sworn and testified, Exhibits were admitted.

EXHIBIT A

From testimony heard and exhibits examined, the Pollution Control Hearings Board makes these

FINDINGS OF FACT

I.

Respondent, pursuant to Section 5, chapter 69, Laws of 1974, 3d Ex. Sess., has filed with this Board a certified copy of its Regulation I containing respondent's regulations and amendments thereto.

II.

Section 9.02(5) of respondent's Regulation I makes it unlawful to cause or allow an outdoor fire in violation of any applicable law, rule or regulation of any governmental agency having jurisdiction over such fire. Section 3.29 authorizes a civil penalty of not more than \$250 for a violation of Regulation I.

III.

Several years ago, appellant purchased a six-acre parcel of land at 76th Avenue East and River Road, between Puyallup and Tacoma in Pierce County. Appellant, who had rights to remove bark chips from a Port of Tacoma facility, used the area for dumping with the idea of filling the site. Without permission from appellant and in spite of no trespass posting by appellant, other persons also dumped waste materials on the site. Thus, auto wrecking wastes, non-ferrous metals, combustible material and building wastes were added to the wood chips dumped at the site by appellant. The place, in effect, became a large compost pile with underground heat being developed by anaerobic decomposition. Appellant erected a barbed-wire fence but this was destroyed by other persons who continued to use the site for dumping.

FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

IV.

In the spring of 1974, the Pierce County fire marshal, noting steam escaping from underground fissures on the subject site, issued to appellant an order to cease all dumping of combustible material at the site. Appellant promptly complied.

V.

In the early fall of 1974, the Pierce County fire marshal witnessed at the subject site an underground fire which broke out to the surface. At that time, appellant was instructed by the fire marshal to break open the heated area with a bulldozer. He did so, but the fire marshal felt appellant did not dig deep enough.

VI.

In the fall of 1974, an inspector on respondent's staff--a person experienced in underground fires caused by anaerobic decomposition at dump sites--observed steam escaping from subject site. At that time, the inspector warned appellant of the incipient danger of a fire, and a resultant collapse of the ground level, at the site. The inspector informed appellant that appellant should dig up and expose the heated underground material. Appellant, however, did not respond to the suggestion.

VII.

On December 10, 1974, appellant was cited by respondent in Notice of Violation No. 10226 for a violation of Section 9.02 of respondent's Regulation I at the subject site. There is no testimony that respondent levied a civil penalty for this alleged violation.

FINDINGS OF FACT,
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VIII.

Near midnight on December 19, 1974, an underground fire erupted at the site, spewing steam, smoke and methane gas "torch" flames and causing a ground level collapse of an area twelve feet by ten feet. A fire department crew fought the fire. An inspector on respondent's staff was called to the scene. Appellant was notified of the emergency and he, likewise, came to the site. Appellant was directed by the inspector to employ a bulldozer the next day to expose the heated area and to keep necessary equipment and employees at the site as long as necessary to prevent another fire outbreak.

Appellant arranged for a bulldozer to break and spread the heated ground on December 20, 1974. Thereafter, he instructed an employee to drive by the site early every morning to inspect for any signs of a fire outbreak.

IX.

In connection with the December 19, 1974 incident, respondent served appellant with Notice of Violation No. 10122, citing Section 9.02 of respondent's Regulation I, and Notice of Civil Penalty No. 1870 in the sum of \$100, which is the subject of this appeal.

X.

On December 23, 1974, an inspector on respondent's staff saw heavy smoke emerging from the subject site. He saw no person in attendance or attempting to extinguish the underground fire which was causing the smoke. In connection with this incident, respondent served appellant with Notice of Violation No. 10123, citing Section 9.02 of respondent's Regulation I, and Notice of Civil Penalty No. 1871 in the sum of \$250.

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XI.

Any Conclusion of Law hereinafter stated which is deemed to be a Finding of Fact is adopted herewith as same.

From these Findings, the Pollution Control Hearings Board comes to these

CONCLUSIONS OF LAW

I.

Appellant intended to appeal both civil penalties herein; that is, Notices of Civil Penalty Nos. 1870 and 1871. The notice of appeal filed with this Board, although not a model of clarity, did not mislead respondent as to what was being appealed; note in this regard that respondent's Notice of Formal Hearing, filed with this Board on February 4, 1975, cites both civil penalties (Nos. 1870 and 1871). The content of the intended appeal, was fully understood at the hearing by all participants, and there being no undue prejudice flowing therefrom, and respondent having presented evidence regarding both civil penalties, we deem both civil penalties as being appealed.

II.

Appellant was in violation of Section 9.02 of respondent's Regulation I as cited in Notices of Violation Nos. 10122 and 10123.

III.

In view of the "warning" violation issued to appellant by respondent on December 10, 1974 (Notice of Violation No. 10226), said citation not being accompanied by a civil penalty, both Notice of Civil Penalty No. 1870, in the sum of \$100, and Notice of Civil Penalty No. 1871, in

FINDINGS OF FACT,
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1 respondent forthwith \$100; the balance of \$250 is suspended on these two
2 conditions: (1) no further violations for a period of six months from
3 the date this Order becomes final, and (2) appellant to work closely with
4 respondent in planning a solution to his problem and to do whatever is
5 reasonable to his dump site to prevent any similar violations in the
6 future.

7 DONE at Lacey, Washington this 1st day of July, 1975.

8 POLLUTION CONTROL HEARINGS BOARD

9 Chris Smith
10 CHRIS SMITH, Chairman

11 Walt Woodward
12 WALT WOODWARD, Member
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26 FINDINGS OF FACT,
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